
(1999) 12 DEL CK 0120
In the Delhi High Court
Case No : C.W.P. No. 1646 of 1997

S.D. Technical Services Pvt. Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 24-12-1999

Acts Referred:

Citation : (2000) 85 FLR 19 : (2001) 3 LLJ 80

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Judgement

A.K. Sikri, J.—Petitioner, Management of S.D. Technical Services Pvt. Ltd., (hereinafter called the "management") has challenged, by means of this Writ Petition, Award dated January 30, 1997 passed by Labour Court, presided over by Shri. J.P.S. Malik, in I.D. No. 66/95 granting the relief of reinstatement with full back wages and consequential benefits to respondent No. 2 Shri K.K. Arora (hereinafter referred to as the "workman"). Factual background giving rise to the dispute between the Management and the workman culminating in impugned award dated January 30, 1997 is as follows:

2. Workman joined the services of the Management on September 9, 1983 as Purchase Officer in defense Division. On April 5, 1986, Charge Sheet was issued to him on the following three counts:-

(i) Habitual late attendance;

(ii) Unauthorized absence for more then 2 months period;

(iii) Purchase of faulty material on account of lack of interest, in the work, and by not exercising proper check.

3. Enquiry Officer was appointed who held enquiry and submitted his report on July 7, 1986, holding the charges against the workman stood proved. Workman was called upon to show cause as to why he should not be removed from service in view of the aforesaid findings of the Inquiry Officer. He submitted his reply.

After considering his reply, by order dated September 16, 1986. Inquiry officer imposed penalty of "removal from service." Workman filed appeal which was dismissed by the appellate authority vide order dated September 29, 1986.

4. Aggrieved against the penalty, workman raised industrial dispute which was referred to the Labour Court vide reference dated December 9, 1986 with the following terms of reference:

"Whether the termination of services of Shri K.K. Arora is illegal and/or unjustified, if so to what relief is he entitled and what directions are necessary in this respect?"

5. Notice was sent to both the parties by the Labour Court after receipt of reference. Workman filed his statement of Claim inter alias challenging the departmental inquiry on the ground that it was defective, in violation of principles of natural justice and the findings were perverse. The management filed reply defending the enquiry and findings against workman. It was, however, stated that in case the Labour Court comes to the conclusion that enquiry is vitiated, Management should be given chance to adduce additional evidence to prove the charge before the Labour Court.

6. After the pleadings, the Labour Court framed the following issue :-

"Whether the enquiry conducted by the Management is unfair, mala fide and in violation of principles of natural justice?"

7. It was treated as Preliminary Issue. On this issue, evidence was led by both the parties; written arguments were also filed by both the parties in addition to oral arguments addressed before the Court. Thereafter Labour Court gave the impugned award, In so far as Preliminary Issue is concerned, the Labour Court held that findings of the inquiry officer were without any basis. As there was no evidence against the workman adduced by the management the enquiry was held to be vitiated. This preliminary issue was, Therefore, decided against the Management.

8. However, after giving the aforesaid findings on preliminary issue, Labour Court proceeded to decide the terms of reference also and observed that as the Management had not sought permission of the Court to adduce evidence in Court itself to prove the allegations against the workman, termination was illegal and unjustified and relief of reinstatement with back wages was granted.

9. Mr. S. Mukherjee, learned counsel appearing for the Management challenged the award mainly by arguing that the impugned award was rendered granting reinstatement with full back wages, solely on the ground that the enquiry is defective. Apart from the fact that the enquiry was not defective, without giving opportunity to the petitioner to adduce evidence to prove the charge before the Court even when petitioner had at the earliest opportunity (i.e. in the W.S) not only made request for adducing evidence directly before the Labour Court to substantiate the charges, but the evidence was actually adduced as well, with no

cross-examination by the respondent workman. As such the Labour Court was duty bound to grant an opportunity to the management to substantiate the charges with the additional evidence in terms of the judgment in DCM case and in a catena of cases or atleast considered the evidence on record. Labour Court did not even refer to either the request made in the W.S. or to the deposition of management's witness running into more than 4 pages.

10. A perusal of the impugned award shows that only one issue was framed regarding validity of the enquiry which was treated as preliminary issue. What prompted Labour Court to decide the issue relating to terms of reference while treating it as issue No. 2 may be seen from its, observation in para 6 of the impugned award which reads as under:

"6. Written arguments have been filed on behalf of both the parties and evidence was adduced by both the parties on the preliminary issue framed as well as the entire reference. Similarly written arguments were also submitted on behalf of both the parties on all the aspects of the matter. Accordingly I decide the reference itself along with the preliminary issue framed in the proceedings"

11. As noticed above, while deciding the terms of reference, the Labour Court has recorded that no permission is sought by the Management to adduce evidence in the Court itself to prove the allegations and Therefore, once it is held that inquiry is vitiated and management is not coming forward to prove the charges by adducing evidence before the Court, termination is held to be illegal and unjustified.

12. The approach of the Labour Court is clearly erroneous in as much as-

(a) When only one issue regarding validity of the enquiry was framed and it was treated as preliminary issue the Labour Court was supposed to decide this issue first and after deciding this issue it should have called upon the parties for giving opportunity of being heard on the issue relating to terms of reference, which is termed as issue No. 2. At this stage it could have seen as to whether the issue No. 2 is to be decided without further evidence or whether opportunity is to be given to the Management to lead evidence or not. In fact, as discussed later, factual error is committed by the Labour Court in deciding issue No. 2 by erroneously recording that no permission was sought to adduce evidence although such permission was sought in the written statement itself. After deciding issue No. 1, had the case been fixed for further proceedings, this aspect would have been clarified by the Management which would not have led to this error.

(b) Even if it is presumed that Labour Court could go ahead to decide issue No. 2 i.e. on merits of terms of reference, in view of what is stated in para 6 of the impugned award as reproduced above, the decision on issue No. 2 is clearly erroneous as this issue was decided on the presumption that no permission to adduce evidence was sought. This is clearly against the record. In para 18 of the written statement filed by the Management, the Management has stated as

under:

"It is submitted that the domestic enquiry conducted against the workman is fair and proper and the same does not suffer from any infirmity as alleged for at all. However, if this Hon"ble Court comes to the conclusion that the enquiry is defective for any reason whatsoever, the Management would, in that event, lead fresh evidence before this Hon"ble Court to prove the charge."

Thus, the impugned award on issue No. 2 is liable to be set aside on this ground itself.

(c) Not only this, in para 6 of the impugned award the Labour Court has itself noticed that the parties have led the evidence on the preliminary issue as well as the entire reference, which means Management had led evidence before the Labour Court to prove charges leveled against the workman in the Charge Sheet. When this was the reason which prompted the Labour Court to decide issue No. 2, how Labour Court could ignore the said evidence while deciding issue No. 2. In such circumstances, Labour Court was duty bound to analyze the evidence produced before it to come to the conclusion as to whether the charges against the workman as leveled in the charge sheet were proved or not, It is strange that on one hand the Labour Court mentions in the impugned award that no opportunity to lead the evidence is sought by the Management (although erroneously) and on the other hand whatever evidence adduced by the management before Labour Court to substantiate the allegations leveled against the workman in the charge sheet, even that is not taken into consideration and the management is made to suffer both ways.

13. Counsel for the respondent/ workman however argued that the petitioner-Management should not be given opportunity to adduce evidence once such an opportunity was not sought earlier and referred to the judgment of Supreme Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, . This case is not applicable to the facts and circumstances of the present case wherein such permission was in fact sought, on the first available opportunity by filing written statement itself. For same reason, the judgment of Kerala High Court in the case of *The President, Cherpu Service Cooperative Bank Ltd. v. Industrial Tribunal. Calicut and Anr.* 1980 Lab. IC 911 as cited by the respondent is also not applicable.

14. The impugned award is accordingly set aside. The matter is remanded back to the Labour Court to decide issue No. 2 afresh, on the basis of evidence produced by both the parties and giving further opportunity to the Management to adduce whatever evidence they want to produce in support of charges leveled against the workman. The workman shall also be given opportunity to produce evidence in rebuttal. Writ petition stands allowed in aforesaid terms. In the circumstances of the case, there shall be no order as to costs.